

Title 6. Education

Chapter III. Division of Public School Academic Facilities and Transportation, Department of Education

Subchapter A. Generally

Part 320. Appeals from Determinations of the Division of Public School Academic Facilities and Transportation

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "Effective December 31, 2018".

"Regulatory authority[.] These Rules shall be known as the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation. These Rules are promulgated pursuant to Ark. Code Ann. §§ 6-20-2512, 6-20-2513, 6-20-2516, and 25-15-201 et seq."

Subpart 1. General Provisions

6 CAR § 320-101. Purposes of rules, burden of proof, and definition of terms.

(a) The first purpose of this part is to implement the requirements of Arkansas Code §§ 6-21-801– 6-21-815 to provide a method by which school districts may appeal decisions made by the Division of Public School Academic Facilities and Transportation to the Commission for Arkansas Public School Academic Facilities and Transportation.

(b) The second purpose of this part is to implement the requirements of Arkansas Code § 6-21-816 to provide a method by which a school district or public charter school may appeal a decision made by the division to the commission related to a waiver request.

(c) The third purpose of this part is to implement the requirements of Arkansas Code §§ 6-20-2512, 6-20-2513, and 6-20-2516 to provide a method by which school

districts may appeal decisions made by the division to the Academic Facilities Review Board as well as from decisions made by the board to the commission.

(d) For the purposes of all appeals brought pursuant to this part, the appealing party shall have the burden of proving that the division's written determination is:

- (1) Not supported by substantial evidence; or
- (2) Outside the legal authority vested in the division.

(e)(1) For the purposes of this part, the term "substantial evidence" means relevant evidence that a reasonable mind might accept to support a conclusion.

(2) Substantial evidence is not based upon speculation and conjecture.

(3) A review of substantial evidence is not based upon whether the facts would have supported a contrary finding by the division, but whether the facts supported the finding made by the division.

(f) As used in this part, the term "public charter school" has the same meaning as in Arkansas Code § 6-21-815.

(g) As used in this part, the term "school district":

(1) Does not include a "public charter school" as defined in Arkansas Code § 6-21-815; and

(2) Includes a "conversion public charter school" as defined in Arkansas Code § 6-23-103(5).

Authority. Arkansas Code § 6-20-2512.

Subpart 2. Direct Appeals to the Commission

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Ark. Code Ann. §§ 6-21-801 et seq.)"

6 CAR § 320-201. Appeals process — Direct appeals to the commission.

(a) Pursuant to Arkansas Code § 6-21-814, a school district may appeal any final written determination of the Division of Public School Academic Facilities and

Transportation made under the provisions of the Arkansas Public School Academic Facilities Program Act, Arkansas Code § 6-21-801 et seq., by following this process:

(1)(A) A school district may request in writing, and the division shall provide within twenty (20) calendar days, a written determination concerning a matter directly affecting the school district that is covered under Arkansas Code §§ 6-21-801– 6-21-815.

(B) A school district may not utilize the procedures outlined in this section to request a written determination that is in effect a request for reconsideration of an earlier written determination;

(2)(A) If the school district wishes to appeal the written determination of the division, the school district shall, within sixty (60) calendar days of receipt of the division's written determination, submit to the Department of Education's Office of General Counsel, with a copy to the division, a written request for an appeal or an appeal and hearing with the Commission for Arkansas Public School Academic Facilities and Transportation.

(B) With its written request, the school district shall submit a brief written statement of no more than fifteen (15) pages explaining, in clear and express terms:

(i) The facts of the case; and

(ii) How the division's determination is:

(a) Not supported by substantial evidence; or

(b) Outside the legal authority vested in the division.

(C) At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the commission.

(D) If the appeal or appeal and request for hearing are not received within sixty (60) calendar days from the date of the receipt of the division's written determination, the commission shall deny the appeal on the grounds that it is untimely;

(3)(A)(i) Upon timely receipt of the school district's written request for an appeal or appeal and hearing, the division may prepare a written statement in response.

(ii) The division's written response is limited to fifteen (15) pages.

(B) The division shall provide its written response to the department's Office of General Counsel, with a copy to the school district, within thirty (30) calendar days of receipt of the school district's written request for an appeal; and

(4)(A) Once the written statements from the school district and the division are received by the commission, the commission shall consider the appeal at the call of the chair of the commission.

(B) Except for good cause shown, the chair of the commission shall schedule the meeting for consideration of the appeal within thirty (30) calendar days of receipt of the division's written response.

(C) Notice of the date, time, and location of the meeting shall be sent to the:

- (i) Appealing school district; and
- (ii) Division.

(D) If requested by the appealing school district, or if the commission determines that a hearing is necessary, a hearing concerning the appeal shall be held:

- (i) During the meeting; and
- (ii) In accordance with 6 CAR § 320-202 of this part.

(b) A school district or public charter school may appeal a final written determination of the division made under Arkansas Code § 6-21-816 related to a school district petition for a waiver by following this process:

(1) A school district or public charter school may not utilize the procedures outlined in this subsection to request a written determination that is in effect a request for reconsideration of an earlier written determination;

(2)(A) If the school district or public charter school wishes to appeal the written determination of the division, it shall, within sixty (60) calendar days of receipt of the division's written determination, submit to the department's Office of General Counsel, with a copy to the division and to the nonappealing party, a written request for an appeal or an appeal and hearing with the commission.

(B) With its written request, the appealing party shall submit a brief written statement of no more than fifteen (15) pages explaining, in clear and express terms:

(i) The facts of the case; and

(ii) How the division's determination is:

(a) Not supported by substantial evidence; or

(b) Outside the legal authority vested in the division.

(C) At the time of submitting its initial brief, the appealing party shall indicate whether it requests a formal hearing before the commission.

(D) If the appeal or appeal and request for hearing is not received by the division within sixty (60) calendar days from the date of the receipt of the division's written determination, the commission shall deny the appeal on the grounds that it is untimely;

(3)(A) Upon timely receipt of the appealing party's written request for an appeal or appeal and hearing, the division and nonappealing party each may prepare a brief written statement in response, each of which is limited to fifteen (15) pages.

(B) The division and nonappealing party shall provide any written response to the department's Office of General Counsel, with a copy to the appealing party, within thirty (30) calendar days of receipt of the appealing party's written request for an appeal; and

(4)(A) Once written responses are received by the commission or the time to provide a written response passes, whichever is earlier, the commission shall consider the appeal at the call of the chair of the commission.

(B) Except for good cause shown, the chair of the commission shall schedule the meeting for consideration of the appeal within thirty (30) calendar days of receipt of the written response or responses.

(C) Notice of the date, time, and location of the meeting shall be sent to the:

(i) Appealing party;

(ii) Nonappealing party (regardless of whether it filed a written response); and

(iii) Division.

(D) If requested by the appealing party or if the commission determines that a hearing is necessary, a hearing concerning the appeal shall be held:

(i) During the meeting; and

(ii) In accordance with 6 CAR § 320-202 of this part.

Authority. Arkansas Code § 6-20-2512.

6 CAR § 320-202. Appeal hearing procedures — Direct appeals to the commission.

(a)(1) For hearings under Arkansas Code §§ 6-21-801– 6-21-815, the appealing school district and Division of Public School Academic Facilities and Transportation each shall have up to ten (10) minutes to present an opening statement, beginning with the appealing school district.

(2) The chair of the Commission for Arkansas Public School Academic Facilities and Transportation may allow either party additional time to present an opening statement.

(3) For hearings under Arkansas Code § 6-21-816, the same procedure applies except that the nonappealing party (whether the school district or public charter school) shall have like time to present an opening statement following the appealing party and the division.

(b)(1) For hearings under Arkansas Code §§ 6-21-801– 6-21-815, the appealing school district and the division each shall have up to fifteen (15) minutes to present their cases-in-chief to the commission, beginning with the appealing school district.

(2) The chair of the commission may allow either party additional time to present their cases-in-chief.

(3) For hearings under Arkansas Code § 6-21-816, the same procedure applies except that the nonappealing party (whether the school district or public charter school)

shall have like time to present its case-in-chief following the appealing party and the division.

(c)(1) For hearings under Arkansas Code §§ 6-21-801– 6-21-815, after both parties have presented their cases-in-chief, the appealing school district and the division each shall have up to five (5) minutes to present a closing statement, beginning with the appealing school district.

(2) The chair of the commission may allow either party additional time to present a closing statement.

(3) For hearings under Arkansas Code § 6-21-816, the same procedure applies except that the nonappealing party (whether the school district or public charter school) shall have like time to present a closing statement following the appealing party and division.

(d) Members of the commission may ask questions of any party at any time throughout the proceedings.

(e) For the purposes of the record, documents offered during the hearing marked in sequential, numeric order, and in a manner identifying the party offering the document.

(f) After hearing all testimony and evidence presented, the commission shall deliberate and may:

- (1) Announce its decision at the close of the hearing; or
- (2) Take the matter under advisement.

(g) The commission shall render a written decision to approve, deny, or place in abeyance each appeal within thirty (30) calendar days of the hearing of the appeal by the commission.

(h) If the appeal is brought under Arkansas Code § 6-21-815 or § 6-21-816, all time frames under those sections shall be tolled during the pendency of the appeal.

Authority. Arkansas Code § 6-20-2512.

6 CAR § 320-203. Finality of commission decisions.

All decisions of the Commission for Arkansas Public School Academic Facilities and Transportation resulting from the appeal of a Division of Public School Academic Facilities and Transportation determination shall be final and not subject to:

- (1) Further appeal or request for rehearing to the commission; or
- (2) Petition for judicial review under the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code § 6-20-2512.

Subpart 3. Appeals to the Academic Facilities Review Board

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Ark. Code Ann. §§ 6-20-2501 – 6-20-2516)".

6 CAR § 320-301. Review board appeal procedures.

(a)(1) Pursuant to Arkansas Code § 6-20-2513, a school district may appeal any written determination of the Division of Public School Academic Facilities and Transportation made under the provisions of the Arkansas Public School Academic Facilities Funding Act, Arkansas Code § 6-20-2501 et seq., to the Academic Facilities Review Board.

(2) For the purpose of this section, the phrase "Written Determination" includes the division's notice of approval of construction projects eligible for state financial participation under Arkansas Code § 6-20-2507.

(b)(1) A school district may request in writing, and the division shall provide within twenty (20) calendar days, a written determination concerning a matter directly affecting the school district that is covered under Arkansas Code §§ 6-20-2501– 6-20-2516.

(2) A school district may not utilize the procedures outlined in this subsection to request a written determination that is in effect a request for reconsideration of an earlier written determination.

(c)(1) If the school district wishes to appeal the written determination of the division, the school district shall, within sixty (60) calendar days of receipt of the division's written determination, submit to the Department of Education's Office of General Counsel with a copy to the division, a written request for an appeal or an appeal and hearing with the board.

(2) With its written request, the school district shall submit a brief written statement of no more than ten (10) pages explaining in clear and express terms:

(A) The facts of the case; and

(B) How the division's determination is:

(i) Not supported by substantial evidence; or

(ii) Outside the legal authority vested in the division.

(3) At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the board.

(4) If the appeal or appeal and request for hearing are not received within sixty (60) calendar days of the division's written determination, the board shall deny the appeal on the grounds that it is untimely.

(d)(1)(A) Upon timely receipt of the school district's written request for an appeal or an appeal and hearing, the division may prepare a brief written statement in response.

(B) The division's written response is limited to ten (10) pages.

(2) The division shall provide its written response to the department's Office of General Counsel, with a copy to the school district, within thirty (30) calendar days of receipt of the school district's written request for an appeal.

(e)(1) If the school district does not request a hearing, the board shall meet upon the call of the chair to consider the appeal.

(2) Except for good cause shown, the chair of the board shall schedule the meeting within thirty (30) calendar days of receipt of the division's written response.

(3) Notice of the date, time, and location of the meeting shall be sent to the:

(A) Appealing school district; and

(B) Division.

(f)(1) If the school district requests a hearing or if the board determines that a hearing is necessary, the board shall meet upon the call of the chair.

(2) Except for good cause shown, the chair of the board shall schedule the hearing within thirty (30) calendar days of receipt of the division's written response.

(3) Notice of the date, time, and location of the hearing shall be sent to the:

(A) Appealing school district; and

(B) Division.

(4) Hearings shall be conducted pursuant to subsection (h) of this section.

(g) A majority of the members of the board shall constitute a quorum, and all actions taken by the board shall be by a majority of the quorum present.

(h)(1)(A) For each hearing, the appealing school district and the division each shall have five (5) minutes to present an opening statement, beginning with the appealing school district.

(B) The chair of the board may allow either party additional time to present an opening statement.

(2)(A) The appealing school district and the division each shall have fifteen (15) minutes to present their cases-in-chief to the board, beginning with the appealing district, which bears the burden of proof.

(B) The chair of the board may allow either party additional time to present their cases-in-chief.

(3)(A) The appealing school district and the division each shall have five (5) minutes to present a closing statement, beginning with the appealing school district.

(B) The chair of the board may allow either party additional time to present a closing statement.

(4) Members of the board may, at any time during the proceedings, ask questions to representatives of either party.

(5) For the purposes of the record, documents offered during the hearing shall be marked in:

(A) Sequential, numeric order; and

(B) A manner identifying the party offering the document.

(6)(A) Following a hearing, the board shall make a final determination accepting, rejecting, or modifying the determination of the division.

(B) The board may:

(i) Deliberate and announce its determination at the close of the hearing; or

(ii) Take the matter under advisement.

(C) The board shall provide to the school district and the division its written final determination within ten (10) business days of the hearing.

Authority. Arkansas Code § 6-20-2512.

6 CAR § 320-302. Appeal process — Commission review of decisions of the review board.

(a)(1) If the school district wishes to appeal the final determination of the Academic Facilities Review Board, the school district shall within thirty (30) calendar days of receipt of the board's final determination, submit to the Department of Education's Office of General Counsel, with a copy to the Division of Public School Academic Facilities and Transportation, a written request for an appeal or an appeal and hearing from the board's final determination to the Commission for Arkansas Public School Academic Facilities and Transportation.

(2) With its written request, the school district shall submit a brief written statement of no more than fifteen (15) pages explaining, in clear and express terms:

(A) The facts of the case; and

(B) How the division's determination is:

(i) Not supported by substantial evidence; or

(ii) Outside the legal authority vested in the division.

(3) At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the commission.

(4) If the appeal or appeal and request for hearing are not received within thirty (30) calendar days from the date of the receipt of the board's written final determination, the commission shall deny the appeal on the grounds that it is untimely.

(b)(1)(A) Upon timely receipt of the school district's written request for an appeal or appeal and hearing, the division may prepare a written statement in response.

(B) The division's written response is limited to fifteen (15) pages.

(2) The division shall provide its written response to the department's Office of General Counsel, with a copy to the school district, within thirty (30) calendar days of receipt of the school district's written request for an appeal.

(c)(1) Once the written statements from the school district and the division are received by the commission, the commission shall consider the appeal at the call of the chair of the commission.

(2) Except for good cause shown, the chair of the commission shall schedule the meeting for consideration of the appeal within thirty (30) calendar days of receipt of the division's written response.

(3) Notice of the date, time, and location of the meeting shall be sent to the:

(A) Appealing school district; and

(B) Division.

(4) If requested by the appealing school district or if the commission determines that a hearing is necessary, a hearing concerning the appeal shall be held:

(A) During the meeting; and

(B) In accordance with 6 CAR § 320-303 of this part.

(d)(1) If the board's final determination will result in a greater level of state financial participation in a project than previously authorized by the division, the board's final determination shall be reviewed by the commission at the call of the chair of the commission.

(2) When the chair of the commission determines that a review is mandated by subdivision (d)(1) of this section, the chair shall, within thirty (30) calendar days of the date of the board's decision, give written notice to the appealing school district and the division that the final determination shall be reviewed by the commission.

(3) Within thirty (30) calendar days of receipt of notice from the chair of the commission, the appealing school district shall submit to the department's Office of General Counsel, with a copy to the division, a brief written statement of no more than fifteen (15) pages explaining, in clear and express terms:

(A) The facts of the case; and

(B) How the division's determination is:

(i) Not supported by substantial evidence; or

(ii) Outside the legal authority vested in the division.

(C) At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the commission.

(4)(A)(i) Upon timely receipt of the school district's brief written statement, the division may prepare a written statement in response.

(ii) The division's written response shall be limited to fifteen (15) pages.

(B) The division shall provide its written response to the department's Office of General Counsel, with a copy to the school district, within thirty (30) calendar days of receipt of the school district's brief written statement.

(5)(A) Once the written statements from the school district and the division are received by the commission, the commission shall consider the review at the call of the chair of the commission.

(B) Except for good cause shown, the chair of the commission shall schedule the meeting for consideration of the review within thirty (30) calendar days of receipt of the division's written response.

(C) Notice of the date, time, and location of the meeting shall be sent to the:

(i) Appealing school district; and

(ii) Division.

(D) If requested by the appealing school district or if the commission determines that a hearing is necessary, a hearing concerning the review shall be held:

(i) During the meeting; and

(ii) In accordance with 6 CAR § 320-303 of this part.

Authority. Arkansas Code § 6-20-2512.

6 CAR § 320-303. Commission hearing procedures — Appeals from the review board.

(a)(1)(A) For each hearing, the appealing school district and the Division of Public School Academic Facilities and Transportation each shall have up to ten (10) minutes to present an opening statement, beginning with the appealing school district.

(B) The chair of the Commission for Arkansas Public School Academic Facilities and Transportation may grant additional time to either or both parties.

(2)(A) The appealing school district and the division each shall have up to fifteen (15) minutes to present their cases-in-chief to the commission, beginning with the appealing school district.

(B) The chair of the commission may grant additional time to either or both parties.

(b)(1) After both parties have presented their cases-in-chief, the appealing school district and the division each shall have up to five (5) minutes to present a closing statement, beginning with the appealing school district.

(2) The chair of the commission may grant additional time to either or both parties.

(c) Members of the commission may ask questions of either party at any time throughout the proceedings.

(d) After hearing all testimony and evidence presented, the commission shall deliberate and may:

(1) Announce its decision at the close of the hearing; or

(2) Take the matter under advisement.

(e) The commission shall provide to the school district and the division its final written determination within ten (10) business days of the hearing.

Authority. Arkansas Code § 6-20-2512.

6 CAR § 320-304. Finality of commission decisions.

All decisions of the Commission for Arkansas Public School Academic Facilities and Transportation under this part shall be final and not subject to:

- (1) Further appeal or request for rehearing to the commission; or
- (2) Petition for judicial review under the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code § 6-20-2512.